

AN ACT

ENTITLED, An Act to revise certain provisions regarding the administration of medical treatment for individuals with mental illness.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 27A-12-3.11 be amended to read as follows:

27A-12-3.11. Emergency surgery and any other emergency medical procedures may be performed without the patient's consent or court or board order if the life of the recipient is threatened and there is not time to obtain consent or order or if the patient is incapacitated as defined in § 34-12C-1 and substitute informed consent is obtained from an appointed guardian, an attorney-in-fact, or a person with authority pursuant to chapter 34-12C. Documentation of the necessity for the medical procedure shall be entered into the patient's record as soon as practicable.

If it is ordered by a physician, psychotropic medication may be administered to a person in an emergency to prevent serious physical harm to the person or to others. Psychotropic medication, electroconvulsive therapy, and such other medical treatment as may be necessary for the treatment of the person's mental illness may also be administered if the attending physician and one other physician determine that administration of such medication, therapy, or treatment is necessary to prevent significant deterioration of the person's severe mental illness and that the person's potential for improvement would be significantly impaired if such treatment is not provided. The medication, electroconvulsive therapy, or such other necessary medical treatment may be continued for up to ten days and may be extended for one additional ten day period if a petition is filed pursuant to § 27A-12-13.13 within the first ten day period. The reason for such treatment shall be documented in the patient's medical record. Electroconvulsive therapy may be administered only by a physician. Any physician who in good faith orders and administers psychotropic medication, electroconvulsive therapy, or such other necessary medical treatment under this section is immune from any civil

liability for such order and administration, unless injury results from gross negligence or willful or wanton misconduct.

Health care may be performed with the patient's informed consent, or if the patient is incapacitated, by a substitute informed consent from an appointed guardian, an attorney-in-fact, or a person with authority pursuant to chapter 34-12C. Informed consent may be withdrawn at any time, is effective immediately upon communication of the withdrawal of consent to the treatment provider, and shall thereafter be reduced to writing.

No sterilization may be authorized under authority of this title for a person incapable of providing written informed consent.

Section 2. That § 27A-12-3.14 be amended to read as follows:

27A-12-3.14. Copies of the petition and notice of hearing shall be personally served by the sheriff or an elector of any state not a party to the action that is specifically designated by the court or board on the person immediately upon the filing of the petition but no less than five calendar days before the hearing. The notice of hearing shall include the following:

- (1) Notice of the time, date, and place of hearing and directing the person to appear in person;
- (2) Notice of the person's right to be represented by an attorney at the person's own expense or appointed by the court if the person is indigent;
- (3) Notice of the person's right to seek an opinion of an independent psychiatrist at the person's own expense or at the expense of the person's county of residence if the person is indigent; and
- (4) Notice that the costs of any post-commitment proceedings, treatment, medication, and any hearing related to the medication, any post-commitment proceeding, including a habeas corpus proceeding, the costs of compensation for the attorney appointed to represent the person, and any other costs associated with any post-commitment proceeding, are that

person's responsibility, and that a lien for the amount of these costs may be filed upon the person's real and personal property to insure payment.

Upon the filing of the petition the court or board shall immediately appoint counsel for the person if counsel has not been retained. A date shall be set for the hearing within fifteen days of the filing of the petition, and this hearing shall be a priority on the court or board calendar. Allowance for any additional time shall be limited to one seven-day continuance, and shall be restrictively granted, only upon a showing of good cause for delay.

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I certify that the attached Act
originated in the

HOUSE as Bill No. 1198

Chief Clerk

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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1198

File No. _____

Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State